

December 20, 2000

MEMORANDUM

TO: Purchasing Offices
Departments, Institutions, Agencies
Commonwealth of Virginia

FROM: Ron Bell
Director

SUBJECT: Procurement Information Memoranda (PIM) #98-007

Enclosed is PIM #98-007, 12/20/00 representing several changes to the September 1998 edition of the *Agency Procurement and Surplus Property Manual (APSPM)*. Please insert or replace the pages enclosed; the appropriate page numbers are shown at the bottom of the page. The location of text changes are indicated by an arrow in the margin (→►).

Appendix C contains a log in which to list the PIM number and date of revision. This letter and the corresponding PIM #98-007, 12/20/00 should be filed in the back of the Appendix C log. Replacement pages should be inserted as indicated.

Section	Summary of Changes	Replacement Pages as Indicated
3.10 c. (1), (2), & (3) Page 3-7	PIM 98-006, 7/1/00 duplicated some language on Page 3-8 that was already shown on Page 3-7.	Cross out (1), (2) and (3) under 3.10 c on Page 3-7.
4.24j Page 4-16	A new telephone number is provided for the Division of Risk Management.	Change "General Services" in 4.24j to "Treasury." Change the telephone number to 804-786-3152.
4.32 Page 4-18	The section on Unsolicited Proposals was revised.	Replace page 4-18 with new page 4-18 and 4-18a.
10.12 Page 10-4	The limit for approval of fixed-price contracts by the Director of General Services was changed from \$10,000 to \$50,000 or 25% of the contract value.	Change \$10,000 to \$50,000 in the first sentence of 10.12.
12.8 Page 12-6	Two sentences, previously eliminated in a PIM, were incorrectly added back in PIM 98-006, 7/1/00.	In 12.8 cross out the two sentences following the sentence that reads, "The owning agency is responsible for the release of the correct item(s) to the proper party."

Appendix B Page B-2	PIM 98-006, 7/1/00 did not include one word on the last line under C.1.a.	Add the word “where” in the last line of Appendix B, under Anti-Discrimination in C. 1.a. so the last line reads, “...discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to....”
Appendix B Page B-17	An incorrect reference was made to a clause in Appendix B.	On page B-17, clause 35, change the reference in the parenthesis from #32 to #31.

If you should have questions about the changes noted, please contact Nancy M. Davis at 804-786-0323 or ndavis@dgs.state.va.us.

4.30 Antitrust Violations

- a. **General.** Practices that eliminate or restrict competition usually lead to excessive prices and may warrant criminal, civil, or administrative action against the offeror, vendor, or contractor. Examples of anti-competitive practices are collusive bidding, bid rigging, bid rotation, and sharing of the business.

Procurement personnel are an important potential source of investigating leads and recognizing possible antitrust violations. As a result, procurement personnel should therefore be sensitive to indications of unlawful behavior by offerors, vendors contractors, and other procurement, technical, or administrative personnel.

- b. **Reporting Suspected Antitrust Violations.** Agencies shall report to the Office of the Attorney General, or to the agency's attorney advisor, any bids or proposals that show evidence or suspicion an antitrust law violation has occurred. (See *Code of Virginia*, §§59.1-9.1 - 59.1-9.18 & §§59.1-68.6 - 59.1-68.8).

The purpose of the antitrust laws is to promote the free market system in the economy of this Commonwealth by prohibiting restraints of trade and monopolistic practices that act or tend to act to decrease competition. Annex 4-F, lists some behavior patterns that are often associated with antitrust law violations. Offerors, vendors, or contractors meeting the descriptions are not necessarily improper, but they are sufficiently questionable to warrant notifying the Office of the Attorney General or the agency's attorney advisor. Also see Annex 4-H, for a list of warning symptoms to detect possible waste and abuse.

- c. Questions concerning the reporting requirement may be communicated by telephone to the Office of the Attorney General, Antitrust Section (804) 786-2116. Personnel are also encouraged to use the Virginia Waste, Fraud, and Abuse Hotline, 1-800-723-1615.

- 4.31 **Debarment.** Grounds for debarment of vendors and procedures for disqualification and reinstatement of vendors are contained in paragraph 7.20 of the Commonwealth of Virginia's *Vendors Manual*. Copies of the debarment listing may be obtained by calling Contract Compliance, (804) 786-1602.

- 4.32 **Unsolicited Proposals.** This policy applies to goods and non-professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the Commonwealth and no restriction on the Commonwealth's use of such ideas, proposals or the information contained therein shall arise in connection with such submission. The foregoing shall not preclude express, written commitments made by agencies in formal solicitation documents within the limitations imposed by the *Code of Virginia* § 11-52.D and the Freedom of Information Act. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to "loan" or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with the *Virginia Public Procurement Act (VPPA)* and the *Agency Procurement and Surplus Property Manual (APSPM)*. Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the agency and available through the unsolicited proposal, to assist the Commonwealth in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

- a. **Definition:** "Unsolicited Proposal" means a proposal received that is not in response to any Commonwealth initiated solicitation or program.
- b. **Receipt:** Unsolicited proposals shall be submitted in writing directly to the central procuring office of agencies, departments and institutions who shall establish a primary point of contact to coordinate the receipt and handling of unsolicited proposals.

c. Evaluation:

- (1) A favorable comprehensive evaluation of an unsolicited proposal by the agency or institution does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.
- (2) If it is determined by the evaluation that goods or services required by the agency and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the sole source procedures in Chapter 8, *APSPM*. The buyer shall post a notice of intent to award for ten calendar days before awarding the contract.

4.33 **General Services Administration (GSA) Contract Pricing.** The direct placement of an order against a federal GSA contract is not permissible. However, in an oral or written quote environment, or when negotiating a sole source, a bidder may state the price bid is the same as the one listed on the GSA contract. This may be the bidder's way of assuring the buyer that the price offered is the lowest price available. Bids may be accepted as long as the bidder does not require that the agency abide by the terms and conditions of the GSA contract. This is not permissible. DGS/DPS does not interpret awards made under these circumstances as the use of GSA contracts. The fact that a bidder reveals that the price is the same as the GSA contract price is additional information that is being provided. The bidder must be required to abide by the terms and conditions of the Commonwealth of Virginia.